

DRAFT

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GOVERNOR BARBOUR ANNOUNCES SOLUTION
FOR MEDICAID FUNDING

Initiative conforms to existing state, federal law
so no new legislative action is required

Jackson, Mississippi – Governor Haley Barbour today announced the federal Center for Medicare and Medicaid Services (CMS) has approved an administrative solution to funding the Mississippi Medicaid program that is consistent with current law and can be implemented without the need for legislative action.

The solution will make Medicaid and Mississippi's health care providers whole, generate the entire \$90 million shortfall in the state share through a gross revenue assessment on hospitals, and will not cost the state or federal government any extra money.

"For several years I have proposed fair, permanent, sustainable funding solutions for Medicaid, yet the legislature has failed to enact any of them into law. Further delay is simply not acceptable as it would cause the current Medicaid shortfall to become an even greater, more oppressive fiscal strain on the state budget," Governor Barbour said.

"For more than 15 years hospital provider fees have played a significant role in Medicaid's overall funding methodology, and rightly so. The plan I am announcing today, which has been approved by the federal government, maximizes the benefits of those fees in attracting the maximum federal match to state Medicaid dollars," Governor Haley Barbour said.

The new plan does not eliminate the requirement for cuts in Medicaid expenditures; however, the cuts will occur in a manner that will result in the federal government's replacing a large percentage of the cuts through an existing Medicaid program called UPL, or upper payment limit. Current state law allows the state share of the funding to be collected through the existing provider tax on hospitals.

Additionally, the solution includes a federally-mandated 1 percent cut for non-institutional providers, such as nursing homes, physicians and pharmacists.

"I'm very proud of the leaders and staff of the Mississippi Division of Medicaid for the outstanding work they did in drafting this solution," Governor Barbour said. "I'm genuinely grateful for the staff at CMS who recognized this is the right way to resolve this issue and worked closely with our administration to be sure the remedy met all federal requirements. And, the willingness of Hinds County Chancellor William Singletary to rule earlier this month in a nearly two-year-old case about Medicaid financing was essential."

While details of the solution are highly technical in nature, the basic concept includes the following:

- In 2001, Mississippi's Legislature passed a law (Miss. Code Ann. §43-13-117 (18) (b)) establishing a GRA to fund the state share for UPL.
- That law allows DOM to adjust the amount/percentage of the GRA as necessary to draw down the federal share of UPL to which Mississippi hospitals are entitled. Recently, a state court upheld the validity of that statute, expressly confirming DOM's right to adjust the GRA percentage up or down as necessary to draw down the federal share of UPL available to Mississippi hospitals, without further legislative action.
- The recent ruling allows DOM to lower inpatient hospital rates by an amount equal to the mandated cuts (\$375 million) and replace the reimbursements with UPL distributions.
- Hospitals will pay the \$90 million shortfall through a Gross Revenue Assessment and will be reimbursed \$285 million through UPL payments.
- Hospitals will be paying the same amount in provider fees that they have historically contributed to the program and will be made whole through UPL payments as opposed to their inpatient per diem rates.
- This solution prevents the catastrophe that would result from the cuts, and it would do so at no extra cost to the federal budget. DOM simply replaces in-patient hospital reimbursement payments with UPL distributions to these same hospitals.

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THE MEDICAID SOLUTION

Governor Haley Barbour today announced the federal Center for Medicare and Medicaid Services (CMS) has approved an administrative solution to funding the Mississippi Medicaid program that is consistent with current law and can be implemented without the need for legislative action.

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The new plan does not eliminate the requirement for cuts in Medicaid expenditures; however, the cuts will occur in a manner that will result in the federal government's replacing more than 99 percent of the cuts through an existing Medicaid program called UPL, or upper payment limit. Current state law allows the state share of the funding to be collected through the existing provider tax on hospitals.

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administration to be sure the remedy met all federal requirements. Finally, the willingness of Hinds County Chancellor William Singletary to rule earlier this month in a nearly two-year-old case about Medicaid financing was essential,” Governor Barbour said.

Essentially, the solution, which will be implemented effective September 1, 2008, will allow Mississippi to greatly reduce its reimbursement rates for in-patient hospital services and replace the funds through another federal program known as upper payment limit distributions, or UPL.

Background

In 1993 Mississippi’s Legislature authorized the Division of Medicaid (DOM) to collect Intergovernmental Transfers (IGTs) from public hospitals to be used as state matching funds for Disproportionate Share Hospitals DSH payments and medical service payments. Over the ensuing years Mississippi’s Legislature also added other provider fees for all hospitals, including a small bed tax and a gross revenue assessment (GRA) for upper payment limit (UPL) payments.

In 2005 Mississippi’s hospitals paid a total of about \$181 million in combined provider fees through these three mechanisms. (In 2005 about 30% of Mississippi’s state match came from provider fees, including a bed tax on nursing homes.)

That year (2005) CMS determined Mississippi’s (and several other states’) IGT in excess of the state share of DSH payments was non-compliant with federal requirements and ruled part (about \$90 million) of these funds could not be used as state match money.

As that ruling came two months before Katrina, the Legislature and Governor Barbour agreed the state would use \$90 million of the Katrina Emergency Health Care monies, received pursuant to special federal disaster assistance legislation, to replace \$90 million of General Fund monies in the Medicaid budget. The \$90 million of state General Fund Medicaid appropriations was then used as the state match to replace the \$90 million in IGT money in FY 2006.

For FY 2007 and the first half of FY 2008 the state subsequently used an additional \$135 million of similar federal funds to free up state General Fund Medicaid appropriated funds to cover the IGT money for another year and a half. All in all, two and one half years, at \$90 million per year, was replaced in this way, while the Legislature unsuccessfully tried to reach an agreement on how to replace this \$90

million per year to fully fund the Medicaid budget on a permanent basis.

By the end of the 2008 Regular Session of the Legislature no agreement had been reached. DOM was given a \$45 million General Fund deficit appropriation for FY 2008 to fund the remaining half of this annual shortfall because of the Legislature's failure to pass a fair, permanent, and sustainable method of fully funding Medicaid.

Under Mississippi law (Miss. Code Ann. § 43-13-117) the Governor is required to make cuts in Medicaid spending to insure the program does not run a deficit. The DOM Executive Director is required to notify the Governor if Medicaid is spending or will spend more money than is available, and he has done so for FY 2009, which began July 1, 2008.

Because Mississippi's match rate for Medicaid is more than three-to-one (76 % + 24 %), a \$90 million shortfall in state match results in a requirement of a \$375 million total spending cut (state and federal combined).

After the Legislature failed to fill the \$90 million hole in state Medicaid share funding during the Regular Session, Governor Barbour called a Special Session to solve the problem. It began in May, and, despite the beginning of the new fiscal year nearly a month ago, the Legislature remains at an impasse.

As required by law the Governor gave notice on July 10, 2008, of \$375 million in cuts. Since \$375 million is well over ten percent of total Medicaid spending for medical services, the cuts, scheduled to go into effect August 6, 2008, would be severe.

CMS advised the Division of Medicaid not to make all the cuts in hospital programs, so other providers are also facing cuts of between five and ten percent, plus some will have further reductions by imposition of "lower of logic" rules applied to Part B crossover claims. The hospital medical services reimbursement rates still would cost about one-third.

These cuts would be terrible and have an enormous adverse effect on Mississippi's health care system, not only to Medicaid beneficiaries, but for all patients, current and future.

Governor Barbour had hoped the severity of enforcing the law and announcing the cuts would result in legislators realizing a fair,

permanent, and sustainable method of fully funding Medicaid had to be found and passed before the cuts go in effect on August 6.

Regrettably, there is no evidence of any such thing. Indeed, it is now clear to everyone that this impasse results from politics, not policy differences. It is widely discussed and even written in the press that the House leadership wants the Governor to make the cuts because they believe it will hurt him and Republicans, especially Republicans running this fall.

Having realized the House doesn't want to stop the cuts, the Governor's and DOM have been searching for a solution that doesn't require legislation but will stop or greatly reduce the cuts required by law.

The solution

In 2001 Mississippi's Legislature passed a law (Miss. Code Ann. §43-13-117 (18) (b)) establishing a GRA to fund the state share for UPL. That law allows DOM to adjust the amount/percentage of the GRA as necessary to draw down the federal share of UPL to which Mississippi hospitals are entitled. Recently, a state court upheld the validity of that statute, expressly confirming DOM's right to adjust the GRA percentage up or down as necessary to draw down the federal share of UPL available to Mississippi hospitals, without further legislative action.

This statute and case contain the solution to the gridlock that has blocked the resolution of this critical issue for more than two years.

DOM can lower inpatient hospital rates by an amount equal to the mandated cuts (\$375 million) and replace the reimbursements with UPL distributions. While this would be unorthodox, it would prevent the catastrophe that would result from the cuts, and it would do so at no extra cost to the federal budget. You would simply replace inpatient hospital reimbursement payments with UPL distributions to these same hospitals.

This method is consistent with the UPL, which is designed to make hospitals whole when the Medicaid reimbursement rate is lower than the Medicare reimbursement rate. While the reduction in reimbursement rates required by Mississippi law would go into effect, the differential between the resulting Medicaid rates and those for Medicare would trigger the offsetting UPL payments.